

RODNEY DALE HOOD §
v. § CIVIL ACTION NO. 6:12cv436
DIRECTOR, TDCJ-CID §

The Petitioner Rodney Hood, proceeding *pro se*, filed this application for the writ of habeas corpus challenging the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On July 5, 2012, Hood filed the present federal habeas corpus petition, complaining that the two jurisdictional paragraphs alleged in the indictment are fatally defective, the offense was a misdemeanor and not a felony, the prior offenses were improperly alleged, and he received ineffective assistance of counsel because his attorney did not discover the above errors. The Respondent was ordered to answer and filed a motion to dismiss based upon the expiration of the statute of limitations. Hood did not file a response to the answer, but stated in his petition that he is entitled to equitable tolling because of physical and mental disabilities.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed based upon the expiration of the statute of limitations. The Magistrate Judge observed that Hood offered no specific facts concerning his alleged disabilities, nor did he show how these prevented him from seeking habeas corpus relief in a timely manner. The Magistrate Judge also noted the lengthy gaps of time in the case - Hood was convicted in November of 2003 but did not file his state habeas petition until February of 2011, over seven years later, and then waited over a full year after his state petition was denied in which to seek federal relief. The Magistrate Judge further recommended that a certificate of appealability be denied *sua sponte*.

On December 26, 2012, Hood filed a motion for extension of time in which to file objections to the Magistrate Judge's Report. This motion was granted and Hood was given until February 15, 2013, in which to file such objections as he may have. Hood received a copy of the order granting his motion for extension of time on January 7, 2013, giving him ample time in which to file objections, but to date he has not done so; accordingly, Hood is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings and records in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. See United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 13) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus is hereby DISMISSED with prejudice. It is further

ORDERED that the Petitioner Rodney Hood is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all other motions which may be pending in this civil action are hereby DENIED.

So ORDERED and SIGNED this 4th day of March, 2013.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**